allowed to collect though Jabez met his death while engaged in his unlawful occupation.

It might here be said that the *Burt* case on this point practically follows the reasoning of the *Fauntleroy* case. And this reasoning is potent. But there is much to be said in favor of the view of the Missouri court that "in life policies the insurer has a guaranty against increasing the risk insured, by that love of life which nature has implanted in every creature." *Harpers Adm'r* v. *Phoenix Ins. Co.,* 19 Mo. 506. In other words, few men will play the game they have to die to win. Certainly a person desiring to mature a policy of insurance would not often commit murder and seek execution therefor to accomplish his purpose. It was contended by counsel for insurer in the *Fauntleroy* case that by committing the capital crime Fauntleroy must have intended the legal consequences of his act, but the opposing counsel argued with force that this was just what he did not look forward to and in reply to the argument that the felonious act itself annulled the contract of insurance pointed to the fact that there might have been an escape, pardon, or commutation of sentence.

This line of argument does not, however, touch the contention that one who is insured, while he does not seek death, yet does not dread it—one of its terrors, a family left unprovided for, being taken away. And it is possible that some might be restrained from committing murder if their insurance would fail.

What seems a more potent reason for denying a recovery is the first ground taken in the *Burt* case, that there is an implied obligation on the part of the insured not to tamper with the risk. As said by the court in *Sup. Com. Knights Golden Rule* v. *Ainsworth,* 71 Ala. 436, "it cannot be in the contemplation of the parties that the insured by his own criminal act, shall deprive the contract of its material element"—the time when death occurs. Regardless of considerations of the security of human life, the insured, a party to the contract of insurance, by the commission of a capital crime, deliberately destroys the integrity of the contract in its very essence. He makes that certain, the uncertainty of which was the foundation of the contract. Such is the ground taken in the *Ritter* case and in the *Burt* case and it seems unassailable in principle.

It must be said, however, that the majority of the state courts including Wisconsin have repudiated this doctrine as far as suicide is concerned. *Patterson* v. *Nat. Premium Mut. Life Ins. Co.,* 100 Wis. 118. Their theory is well expressed in the Missouri case above referred to, that "in such policies, unless it is otherwise stipulated, the insurer takes the subject insured with his flesh, blood, and passions." *Harper's Adm'r* v. *Phoenix Ins. Co.,* 19 Mo. 506.

F. D. S.

THE POWER OF A CORPORATION TO HOLD AND VOTE STOCK OF ANOTHER CORPORATION.—An interesting question arose a year ago when the United States District Court for the Western District of Michigan granted a temporary injunction to A. S. Bigelow, complainant, in the case of *Bigelow* v.

Calumet & Hecla Mining Company et al., 155 Fed. 869, restraining the defendants from voting the stock which they held in the Osceola Company and also the proxies which they had acquired from other Osceola stockholders. (See, 6 MICH L. REV. p. 480). Recently the complainant's bill was dismissed on final hearing (167 Fed. 704), and on appeal the decree dismissing the bill was affirmed. *Bigelow* v. *Calumet & Hecla Min. Co.* et al., (1909), — C. C. A. 6th Cir. —, 167 Fed. 721.

The questions involved were whether or not the acts complained of would be in violation of either the Michigan anti-trust law or the Sherman Anti-Trust Act, and the essential facts are these: Both companies are Michigan corporations engaged in mining and refining copper. The Calumet & Hecla Company has bought outright 22,671 shares of the Osceola Company's stock, and has obtained, in the names of its directors, proxies for enough additional stock of the Osceola Company to make a majority of the 100,000 shares of capital stock of the Osceola Company. In circular letters soliciting proxies, the Calumet & Hecla Company openly avows the intention to elect a majority of the Osceola directors from its own directors. Also it is clear that the Osceola Company is to be continued as an independent company.

Amendment to the Michigan mining law (Pub. Acts. Mich. 1905, p. 153, No. 105) provides that corporations organized under the Michigan mining law or any other laws for refining, smelting, or manufacturing ores, metals, or minerals may "subscribe for, purchase, own or dispose of stock in any company organized under this act, or under any other laws, foreign or domestic, for the purpose of mining, refining, smelting or manufacturing any or all kinds of ores or minerals." The power to pass the amendment was reserved § 1, art. 15, of the Constitution of Michigan and the amendment is binding on stockholders. *Att'y. General* v. *Looker,* 111 Mich. 498, 69 N. W. 929, affirmed, 179 U. S. 46, 21 Sup. Ct. 21, 45 L. Ed. 79; *Polk* v. *Mutual Reserve Fund Life Ass'n.,* 207 U. S. 310, 28 Sup. Ct. 65, 52 L. Ed. 222. The right to vote the stock and to acquire and hold stock proxies is expressly given by the Michigan mining act (2 Comp. Laws Mich. § 7002), and the right to vote is also incidental to the ownership of the stock. *Rogers* v. *Nashville, Chattanooga & St. Louis R'y. Co.,* 33 C. C. A. 517, 91 Fed. 299, 312; *Taylor* v. *Southern Pacific R'y. Co.,* 122 Fed. 147.

Since the 1905 amendment of the Michigan mining act was passed subsequent to the Michigan anti-trust law, action thereunder must be considered as legal unless an intention to create a monopoly or restrain trade is present, and the court in the principal case expressly found that no such intention existed.

The power of Congress to pass anti-trust legislation is derived from the constitutional power to regulate commerce among the states and with foreign nations. Therefore in considering the application of the Sherman Anti-Trust Act it must be borne in mind that it applies only to those restraints or monopolies, which directly and immediately, or necessarily, affect commerce among the states or with foreign nations. *Hopkins* v. *United States,* 171 U. S. 578, 19 Sup. Ct. 40, 43 L. Ed. 290.

While it is not necessary to a violation of the act to show affirmatively a specific intent to restrain commerce or create a monopoly, provided such restraint or monopoly be the direct, immediate and necessary result of the combination (*United States* v. *Trans-Missouri Freight Ass'n.*, 166 U. S. 290, 341, 17 Sup. Ct. 540, 41 L. Ed. 1007; *United States* v. *Joint Traffic Ass'n.*, 171 U. S. 505, 19 Sup. Ct. 25, 43 L. Ed. 259; *Chesapeake & Ohio Fuel Co.* v. *United States*, 53 C. C. A. 256, 115 Fed. 610), yet an intent is necessary to be shown when the acts are not sufficient in themselves to produce a result which the law seeks to prevent. *Swift & Co.* v. *United States*, 196 U. S. 375, 396, 25 Sup. Ct. 276, 279, 49 L. Ed. 518; *Commonwealth* v. *Peaslee*, 177 Mass. 267. Further a combination or agreement is not to be assumed to contemplate unlawful results unless a fair construction requires it upon established facts (*Cincinnati, P. B. S. & P. Packet Co.* v. *Bay*, 200 U. S. 179, 184, 26 Sup. Ct. 208, 209, 50 L. Ed. 428), and the court in the principal case found that no such facts were established.

The business of the defendants in the principal case is the mining and refining of copper and this has no direct or immediate connection with interstate commerce, even though the product ultimately enters the so-called "stream of interstate commerce," and the main purpose and chief effect of the action of the Calumet & Hecla Company's acts, as appears from the facts, was to extend its industrial life and keep up its production and net earnings. The case therefore falls within the principle that if a combination only incidentally or indirectly restricts competition, it is not denounced or voided by the federal act. *United States* v. *E. C. Knight Company*, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325; *Hopkins* v. *United States*, supra; *Anderson* v. *United States*, 171 U. S. 604, 19 Sup. Ct. 50, 43 L. Ed. 300; *Davis* v. *A. Booth Co.*, 65 C. C. A. 269, 131 Fed. 31.

The principle of the *Knight* case controls the principal case, for in that case it was held that the acquiring, by the American Sugar Refining Company, of control of 98 per cent of all the sugar refining of the United States was a monopoly only of manufacturing and therefore not in violation of the federal act, whereas in the principal case the action of the Calumet & Hecla Company will affect only about one-ninth of the copper production of the United States, so that here even a monopoly feature is absent.

Many cases have held the agreements and combinations involved therein to be in violation of the federal act. *Loewe* v. *Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. Ed. 488; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 20 Sup. Ct. 96, 44 L. Ed. 136; *Northern Securities Co.* v. *United States*, 193 U. S. 197, 24 Sup. Ct. 436, 48 L. Ed. 679; *United States* v. *Swift*, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; *Montague* v. *Lowry*, 193 U. S. 38, 24 Sup. Ct. 307, 48 L. Ed. 608.

However, none of these latter cases have expressly or impliedly overruled the *Knight* case, supra, and all are distinguishable from that case by the fact that in each one the effect of the combination on interstate commerce was direct and immediate, or the agreement was such that the result was directly and necessarily a monopoly and restraint of competition.

Therefore the principle seems clear that when a corporation is lawfully the owner of the stock of another corporation, it has the power to vote that stock, even to the extent of electing its own directors as directors of the other company, provided the resulting combination is not engaged directly and immediately in interstate commerce, and that the main purpose and necessary result does not effect a restraint of competition. D. B. S.

EFFECT OF AN AGREEMENT NOT TO COMPROMISE WITHOUT CONSENT OF ATTORNEY UPON CONTRACT FOR CONTINGENT FEES.—Cases involving questions of the rights of attorneys in respect of fees are of considerable interest to the profession generally, and because of the large number of cases which attorneys take upon a contingent fee basis the decisions involving this particular phase of the question are peculiarly so. The common law view of champertous contracts has undergone many modifications, so many and in such varying particulars in the various states that it is practically impossible, at the present time, to state any general rule. In a great many jurisdictions contracts for contingent fees are upheld if they appear to be fair and reasonable. See WEEKS, ATTORNEYS AT LAW, § 350 et seq.

Undoubtedly the weight of authority supports the view that a contingent fee contract which contains a clause forbidding the client from making a settlement or compromise of the matter in litigation is void as being opposed to public policy, it being stated as the policy of the law that amicable settlements or compromises of law suits are always to be encouraged, and that any restriction upon the right of a litigant to do so is void, especially when found in connection with a contract for a contingent fee. *Davis* v. *Webber,* 66 Ark. 190, 45 L. R. A. 196, 74 Am. St. Rep. 81; *North Chicago St. R. R. Co.* v. *Ackley,* 171 Ill. 100, 49 N. E. 222, 44 L. R. A. 177, reversing the Appellate Court in the same case, 58 Ill. App. 522; *Davis* v. *Chase,* 159 Ind. 242, 64 N. E. 88, 95 Am. St. Rep. 294; *Boardman* v. *Thompson,* 25 Ia. 487; *Davis* v. *Insurance Co.,* 78 Oh. St. 256, 85 N. E. 504; *Matter of Snyder,* 190 N. Y. 66, 82 N. E. 742. And such provision makes the entire contract void. Cases supra. Some courts, however, have regarded them as valid, or at least as not fatal to the whole contract. *Hoffman* v. *Vallejo,* 45 Cal. 564; *Lipscomb* v. *Adams,* 193 Mo. 530, 91 S. W. 1046, 112 Am. St. Rep. 500; *Potter* v. *Ajax Mining Co.,* 22 Utah, 273, 291, 61 Pac. 999.

In a recent decision by the St. Louis Court of Appeals, the rule in Missouri is said to be based upon the peculiar provisions of their statute relative to attorneys' fees and liens. *Beagles* v. *Robertson,* 115 S. W. 1042. The question arose under a somewhat complicated state of facts. It will suffice for this purpose to observe that it was a suit by a client to recover from his attorney a certain sum of money paid to the attorney by the defendant in the original cause of action in part payment of a settlement of the litigation. The attorney claimed the money as his fee, and set up a contract containing the terms of the contract between him and his client. The client replied that the contract was void because of a provision in it forbidding any compromise of the litigation without consent of the attorney.